

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Phillip Alexander,

Plaintiff

V.

Lito Hernandez,

Defendant

Case No.: 2:18-cv-01103-JAD-GWF

**Order Dismissing Claims Against
Remaining Defendant
Lito Hernandez and Closing Case**

[ECF No. 9]

Pro se plaintiff Phillip Alexander filed this negligence action against Lito Hernandez and

¹⁰ Farmers Insurance Inc., seeking more than ten million dollars for a rear-end car accident.¹ The

¹¹ claims against Farmers were dismissed after Alexander failed to respond to its dismissal motion.²

12 And Alexander was warned that the claims against Hernandez would be dismissed under Rule

13 4(m) of the Rules of Civil Procedure unless Alexander provided proof by October 19, 2018, that

14 he had timely served Hernandez with process.³ Alexander has not provided such proof.

15 FRCP 4(m) requires service of the summons and complaint to be completed within 90

16|| days of the complaint's filing, and “[i]f a defendant is not served within 90 days after the

17 complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss

18 the action without prejudice against that defendant or order that service be made within a

¹ ECF No. 1 at 4.

23 ||² ECF No. 8.

³ ECF No. 11.

1 specified time.”⁴ Rule 4(c)(1) further makes it clear that “[t]he plaintiff is responsible for having
2 the summons and complaint served within the time allowed under Rule 4(m).”⁵

3 District courts have the inherent power to control their dockets, and “[i]n the exercise of
4 that power, they may impose sanctions including, where appropriate, . . . dismissal” of a case.⁶ A
5 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a
6 court order, or failure to comply with local rules.⁷ In determining whether to dismiss an action
7 for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the
8 court must consider several factors: (1) the public’s interest in expeditious resolution of
9 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;
10 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
11 drastic alternatives.⁸

12 I find that the first two factors weigh in favor of dismissal of this case. The risk-of-
13 prejudice factor also weighs in favor of dismissal because a presumption of injury arises from the
14 occurrence of unreasonable delay in filing a document ordered by the court or prosecuting an
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17 ⁴ Fed. R. Civ. P. 4(m).

18 ⁵ Fed R. Civ. P. 4(c)(1).

19 ⁶ *Thompson v. Hous. Auth. of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986).

20 ⁷ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439,
1440–41 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v.*
21 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to
comply with local rules).

22 ⁸ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
23 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

1 action.⁹ A court's warning to a party that failing to obey the court's order or comply with a rule
2 will result in dismissal satisfies the consideration-of-alternatives requirement,¹⁰ and Alexander
3 was expressly warned that dismissal could result if he failed to provide proof of service by the
4 October 19th deadline. Although the fourth factor weighs against dismissal, it is greatly
5 outweighed here by those favoring dismissal.

6 Because Alexander has failed to timely serve last-remaining defendant Hernandez, and
7 with good cause appearing and no reason to delay, IT IS HEREBY ORDERED, ADJUDGED,
8 and DECREED that his **claims against Hernandez are DISMISSED** without prejudice under
9 FRCP 4(m). Because this dismissal leaves no claims remaining in this case, IT IS FURTHER
10 ORDERED that the "Claim for Damages" (to the extent that it can be considered a motion)
11 [ECF No. 9] is DENIED as moot. The Clerk of Court is directed to ENTER JUDGMENT
12 accordingly and CLOSE THIS CASE.

13 Dated: October 25, 2018

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15 U.S. District Judge Jennifer A. Dorsey
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⁹ *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

¹⁰ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.